

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.329/Coch/2019 : Asst.Year 2008-2009

Sri.Zacharia Abraham Puthenpurayil House No.104, AKG Nagar 1 st Avenue, Peroorkada Trivandrum – 695 005. PAN : ALWPP6212E.	Vs.	The Income Tax Officer Ward 1(3) Trivandrum.
(Appellant)		(Respondent)

Appellant by : --- None --- (Written submission)

Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 22.08.2019	Date of Pronouncement : 23.08.2019
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ORDER

Per Chandra Poojari, AM :

This appeal by the assessee is directed against the order of the Commissioner of Income-tax dated 15.05.2018 for assessment year is 2008-2009.

2. The assessee has raised following grounds:-

“1. CIT(A) erred in holding that the deposit of money by the appellant in his bank account out of refund of loan by his brother in law as unexplained cash credits.”

2. CIT(A) erred in holding that credit in pass book as credit in the book of the appellant for applying section 68 of the Act.

3. CIT(A) erred in applying the ratio of the decision of 291 ITR 278 in the appellant's case when the facts are totally disagreed.”

3. The facts of the case are that the Assessing Officer while completing the assessment u/s 143(3) of the I.T.Act observed that there are deposits of Rs.5,00,000 into his bank accounts

on the following dates, which is stated to be return of loan amount given to Sri.C.V.Phillip :-

<u>Date</u>	<u>Amount</u>	<u>Bank</u>
02/05/2007	Rs.2,80,000	Central Bank of India
03/05/2007	Rs.45,000	Catholic Syrian Bank
24/12/2007	Rs.2,00,000	Catholic Syrian Bank

The assessee explained to the Assessing Officer that he got return of Rs.3,25,000 on 02.05.2007 from Sri.C.V.Phillip out of this, he deposited Rs.2,80,000 to his bank account with Central Bank of India on 02.05.2007 and balance amount of Rs.45,000 on 03.05.2007. Another Rs.2 lakh received by the assessee on 24.12.2007 from Sri.C.V.Phillip and deposited it on 24.12.2007 to his bank account with Catholic Syrian Bank. However, this was disbelieved by the A.O. and made addition of Rs.5 lakh to the total income of the assessee, as unexplained deposit.

4. Against this, the assessee went in appeal to the first appellate authority, wherein the CIT(A) observed that as regards the source for the deposit of Rs.5 lakh made in assessee's bank account, the assessee claimed to have given this amount to his brother-in-law, Sri.C.V.Phillip as interest free loan out of the loan of Rs.9,00,000 he availed from Central Bank of India, Peroorkada Branch on 26.04.2006. It is not known the purpose for which the assessee had availed the loan. It is also not known whether the assessee was allowed by the bank to divert part of the loan sanctioned to his brother in law. Further, it is not known why money was given to his brother in law by cash and not by cheque or otherwise. Unless these queries are positively answered, the

argument of the assessee that the money which his brother in law allegedly given back on 02.05.2007, 07.10.2007 and 26.03.2008 alone had been credited to the bank account, cannot be accepted. Though the assessee claimed to have filed confirmation letter to the Assessing Officer which in turn according to the assessee, not been entertained but rejected, the Assessing Officer did not mention anything about this in the assessment order passed. Had it really been filed, the same could have been filed atleast during the course of appellate proceedings for further consideration. In the absence of filing the same at the appellate stage, the argument postulated by the assessee in this regard looks to be an after thought to which not much importance need be given at this point of time. The CIT(A) further observed that the judgment of the Hon'ble Supreme Court decision in the case of CIT vs P.Mohanakala {291 ITR 278} relied on by the Assessing Officer would squarely apply to the case of assessee and therefore, the other argument of the assessee that the decision won't apply to him is totally misplaced since in the said decision it was held that if in cases where the explanation offered by the assessee about the nature and source of the sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee viz the receipt of money. The burden is on the assessee to rebut the same and if he fail to rebut it, it can be held against the assessee that it was a receipt of an income nature." Reliance is also placed here to the decision of the Hon'ble High Court of Kerala in the case of ITO vs Diza Holdings {P} Itd {255 ITR 573} wherein it was held that the burden was on the assessee to offer a satisfactory explanation

about the nature and source and the amount found credited in the books of the assessee. Mere furnishing of particulars was not enough and the mere fact that the payment was by way of account payee cheque was also not conclusive. Therefore, the assessee had not explained the cash credits satisfactorily. Accordingly, the CIT(A) confirmed the addition.

5. Against this, the assessee is in appeal before us. There was a delay of 204 days in filing the appeal before the Tribunal. The assessee explained the reason for the belatedly filing of the appeal is that the appellate order dated 15.05.2017 was received by the assessee on 18.05.2018. The assessee has handed over all the documents along with original assessment order to the assessee's Counsel Sri.Suku Abraham Jacob, wherein he confirmed that all the appeal papers were handed over to him to file appeal against the assessment order, by the assessee. Inadvertently, he had under the presumption that the appeal would have been filed in time. However, in the mean time, the appeal papers were misplaced. Thus, there was a delay of 204 days in filing the appeal before the Tribunal and the delay was mainly attributable in tracing the order against which the appeal has to be filed.

6. We have heard the DR's submissions and perused the material on record. In our opinion, there is good and sufficient reason in filing the appeal belatedly before this Tribunal. We find that there is sufficient cause for the belated filing of the appeal and no laches can be attributed to the assessee.

Hence, we condone the delay and admit the appeal for adjudication.

7. None appeared on behalf of the assessee, however, adjournment petition has been filed. We find there is no reasonable cause for granting adjournment, hence, the adjournment sought by the assessee is rejected and proceed to dispose off the appeal on merit duly hearing the learned Departmental Representative.

8. In the present case, the assessee has originally availed Rs.9 lakh from Central Bank of India, Peroorkada Branch, Trivandrum on 26.04.2006. The assessee has taken a plea that he had advanced a sum of Rs.5 lakh out of this loan, to his brother-in-law, Sri.C.V.Phillip and he has returned the money to the assessee on 02.05.2007 Rs.3,25,000, on 07.10.2007 Rs.1,50,000 and on 26.03.2008 Rs.25,000 and these amounts were deposited in the bank account as detailed below:-

<u>Date</u>	<u>Amount</u>
02/05/2007	Rs.2,80,000
03/05/2007	Rs.45,000
24/12/2007	Rs.2,00,000

9. On the other hand, the learned Departmental Representative stated that the money has been deposited by cash and not by cheque, hence, it is also not known whether the assessee was allowed by the bank to draw the advance of loan sanctioned to him so as to give loan to Sri.C.V.Phillip amounting to Rs.5 lakh. However, the learned Counsel for the assessee in his written submission stated that the assessee

has filed confirmation letter and also an affidavit dated 12th June, 2019 from Sri.C.V.Phillip, confirming the returning of loan of Rs.5 lakh to the assessee, and he has also confirmed that he had given confirmation to this effect to the assessee (Sri.Zacharia Abraham Puthenpurayil) to produce the same before the Income-tax authorities in November 2010. Neither the CIT(A) nor the Assessing Officer examined Sri.C.V.Phillip, who said to be returned the money to the assessee. The lower authorities were not doubted the availing of loan by the assessee from Central Bank of India, Peroorkada Branch, Trivandrum on 26.04.2006 at Rs.9 lakh. Both the parties confirmed the additions without examining the concerned parties. The assessee has proved the identity of the person who has returned the loan back to the assessee, the capacity of the person who returned the money has not doubted the assessee. It is also to be noted that there is a confirmation letter from Sri.C.V.Phillip, who has returned the money to the assessee, then, in our opinion, the onus shifts on to the Department and the Department is liable to probe the matter further and investigate the matter to come to an independent and un-bias finding as to the genuineness of the transaction though they should not be rejected the assessee's explanation summarily or arbitrarily or without sufficient reason. The duty of the Assessing Officer is to examine all material carefully and thoroughly. In our considered opinion, both the lower authorities have without examining the parties concerned, rejected the explanation offered by the assessee in a summarily manner, which is not proper. The primary burden on the assessee is to prove the creditworthiness of Sri.C.V.Phillip, and he need not prove the source of funds

available with Mr.C.V.Phillip. In the present case, the assessee disclosed the name and address of Sri.C.V.Phillip, by way of confirmation letter and affidavit, which were not properly examined by the Department and the burden cast upon the assessee has been duly discharged. Hence, in our opinion, the addition cannot be sustained in the hands of the assessee. Accordingly, we are inclined to delete the addition.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 23rd day of August, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 23rd August, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (A) Thiruvananthapuram.
4. The Pr.CIT Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin